IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1081 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARENBHAI PRAVINCHANDRA JOSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1081 of 2003

MR DN PANDYA for Petitioner No. 1

MR BD DESAI, APP for Respondent No. 1

..... for Respondent No. 2

MR JB PARDIWALA for Respondent No. 3

LAW OFFICER BRANCH for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/12/2003

ORAL JUDGEMENT

Mr. Pandya, learned advocate for the petitioner seeks permission to delete respondent no. 3. Permission granted. Respondent no. 3 stands deleted.

2. This petition is filed seeking relief for modification of the conditions imposed by the Ld. Addl. Sessions Judge, Fast Track Court, Bharuch, whereby order passed by the Ld. Magistrate dated 6/9/2003 in application made u/S. 451 of the Code of Criminal Procedure in C.R. No. I-95 of 2003 of Bharuch Rural Police Station is quashed. It appears that the said application was filed by the present petitioner for return of the custody of Rs.1 lac which was seized by the concerned police in connection with the present offence.

2.1. The Ld. Addl. Sessions Judge, while granting the Revision Application and directing the currency notes to be handed over to the petitioner, has imposed certain conditions which have been incorporated in the operative portion of the order. The petitioner has objection to condition no. 1 which stipulates submission of the bank guarantee to the tune of Rs.1 lac and condition no. 3 that as and when required, the said currency notes will be produced before the concerned Court.

3. Mr. D.N. Pandya, learned advocate appearing for the petitioner submits that these conditions have caused enormous hardship to the petitioner in as much as for giving bank guarantee, the petitioner will have to deposit equal sum in the bank and further that till such time the trial is not over, the petitioner will not be able to utilise the money which legally belongs to him.

3.1. As against that, Mr. B.D. Desai, Ld. APP has submitted that the conditions are proper and no interference is called for by this Court.

4. Considering the facts and circumstances of the case, it appears that the petitioner is the owner of the said currency notes. It also appears that he has been duped by the accused who is facing charge of committing offence punishable u/Ss. 406 and 420 read with section 114 of the Indian Penal Code.

5. Upon issuance of notice, Mr. B.D. Desai, Ld. APP has furnished the record of the investigation, which also included the panchnama of the present currency notes. He states that in the said panchnama all the details with regard to the currency notes in question have been recorded including the number of each currency

note. In that view of the matter, it appears that when the detailed panchnama is drawn as per the direction of the Ld. Sessions Judge, the Muddamal forming part of this case in the form of currency notes can be permitted to be utilised by the petitioner. For no fault of his, it will remain idle with him and that may cause him not only financial hardship but also a matter of concern in as much as he will have to preserve those notes till the trial is over. It appears that trial is likely to take considerable time before it commences. In these circumstances, this petition is required to be partly allowed. The conditions at serial nos. 1 and 3 contained in the aforesaid order of the Ld. Addl. Sessions Judge stand deleted. The other conditions will remain as they are. The petition is, therefore, partly allowed. Rule made absolute to the aforesaid extent. D.S. permitted.

[AKSHAY H. MEHTA, J.]

* Pansala.